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CITY OF LAFAYETTE

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MEMORANDUM

TO: PUBLIC AGENCY CLIENTS

FROM: BEST BEST & KRIEGER PUBLIC POLICY AND ETHICS GROUP

RE: NEW RULES FOR GIFTS OF TICKETS AND/OR PASSES TO OFFICIALS

The Fair Political Practices Commission ("FPPC") has adopted new disclosure and reporting requirements concerning gifts of tickets or passes to public officials provided from their local agency for admission to entertainment, recreational, amusement and similar events.[1] The effective date of these new regulations was tentatively determined to be **February 7, 2009**.[2]

WHAT IS THE BASIC RULE?

FPPC Regulation 18944.1, as revised, has been amended to make it clear that a complimentary ticket or pass provided to a public official for admission to such events is considered a personal benefit to that official when no consideration of equal or greater value has been provided in exchange. Please see the attached question and answers for a discussion of certain exceptions to this rule. The public official must disclose this benefit as a *gift* on the official's Statement of Economic Interests ("Form 700") unless that ticket or pass is provided to the public agency, instead of to the official, and is:

- Distributed in accordance with the local agency's written distribution policy;
- Disclosed using Form 802 which must be completed by local agency staff; and
- Displayed in a prominent fashion on the local agency's website within 30 days of the event.

WHAT STEPS DOES YOUR AGENCY NEED TO TAKE NOW?

(1) Adopt a Written Policy

In order for the public official to avoid the requirement to report the ticket or pass on his or her Form 700, the local agency must adopt a written policy that is prominently posted on the local agency's website and contains at a minimum the following three provisions:

- Public Purpose. Each written policy must state the public purpose to be accomplished by the distribution of tickets or passes.

[1] The old regulations considered these tickets or passes as non-reportable by both the agency and individual regardless of the personal benefit received by the public officials in a number of circumstances.

[2] We will continue to monitor this issue and will confirm the final effective date as determined by the Secretary of State once it is determined. Receipt of any tickets or passes before this date will continue to be governed by the old rules.

- Distribution At Official's Request. Each written policy must require that any distribution of tickets or passes to another party, other than a public official, will also accomplish a public purpose of the local agency.

- Transfer Restriction. A public official is now prohibited from transferring any unused ticket or pass to anyone other than a member of his or her immediate family. However, a public official is still permitted to return any unused tickets to the local agency or, in the alternative, may let the ticket go unused.

(2) Complete and Display Form 802 Within 30 Days of Distribution *(See Attached 802 Form for required information.)*

(3) Upon Receiving Tickets, Determine Public Purpose Prior to Distribution

In order to determine the public purpose, the local agency will need to review its written distribution policy and shall determine, in its discretion, which public officials or members of the public will be best suited to serve this particular public purpose. The tickets or passes must be awarded to those persons.

If a selected official is not available for a specific event, the official is permitted to give his or her ticket only to a member of the official's immediate family. In the alternative, the ticket must either be returned to the local agency for redistribution under the distribution policy or go unused. A public official may suggest certain names for the distribution or redistribution of tickets. However; this suggestion may not be considered a directive or mandate by the public official.

Your local agency may want to designate its General Manager/City Manager or establish a citizen gift committee to make these decisions. Internal policies will need to be created to preserve an appropriate ethical wall when the General Manager/City Manager is to be the recipient of the gift.

(4) Inform Benefiting Persons of the Public Purpose

Upon distribution of the ticket to the benefiting party, the local agency must take steps to inform the official, or the person at the public official's behest, of the particular public purpose served by providing the ticket to him or her.

WHAT IS THE MOST IMPORTANT THING TO KEEP IN MIND?

Public officials may no longer distribute bundles of tickets or passes at their own discretion, other than providing their own personal ticket to an immediate family member if he or she is unable to attend the event. Public officials may continue to request tickets from the local agency for use by particular persons. However, the final decision must remain that of the agency and not the official.

Again, tickets provided at the request of a public official must be done in accordance with the proposed written policy and appropriately disclosed. Failure to comply with FPPC

Regulation 18944.1 will render gifts of tickets or passes reportable on the public official's Form 700.

WHAT TO DO IF YOU NEED ADDITIONAL ASSISTANCE?

Please contact your local BBK attorney if you have any questions or need assistance in drafting a written distribution policy. Given the tremendous overhaul of this rule, the FPPC remains cautious about providing general advice. We can anticipate future advice letters and guidelines to determine how this rule will be interpreted as more complex factual scenarios are presented.

SONIA CARVALHO
GROVER TRASK
PARISSH KNOX

Q&A RE GIFTS OF TICKETS AND/OR PASSES TO OFFICIALS

1. WHAT ARE THE BASIC GENERAL RULES?

First, a public official may accept complimentary tickets or passes provided by the local agency without it constituting a gift to the official ***only if*** the tickets or passes are distributed pursuant to a written distribution policy duly adopted by the local legislative body that defines the public purpose served in using the tickets or passes.

Second, those tickets or passes must be disclosed using Form 802 which must be completed by local agency staff and displayed in a prominent fashion on the local agency's website within 30 days of any distribution, unless otherwise exempted.

2. WHAT ARE THE EXCEPTIONS TO THESE RULES?

There are four (4) scenarios under which a ticket or pass may be received by a public official and will **not** constitute a gift to the benefiting public official. Under all four scenarios, the public official is not required to disclose the gift on his or her Form 700. However, three remaining exceptions do require additional disclosure and reporting by the local agency using Form 802 discussed below. One exception requires no reporting or disclosure by either the local agency or the public official.

- Three scenarios where local agency staff must complete a Form 802.

Unless exempted above, tickets or passes obtained under one of the following scenarios still require disclosure and reporting of the gift by the local agency using Form 802:

1. **THIRD PARTY SOURCE.** Tickets or passes provided gratuitously by a third-party source to the local agency must be reported on Form 802.

2. **EARMARKS.** Tickets or passes that have been earmarked for use by a specific official and are obtained 1) pursuant to a written contract involving the use of public property, 2) for a local agency-controlled event, or 3) purchased by the local agency at fair market value must be reported on Form 802. All other efforts to earmark the use of a ticket or pass for use by a specific official will result in that ticket or pass being deemed a gift to that official, and therefore will be reportable on his or her Form 700.

3. **INCOME:** The local agency may provide a ticket to the official provided that the public official treats the ticket or pass as income consistent with applicable state and federal income tax laws.

- One scenario where local agency staff is not required to complete a Form 802.

A ticket or pass obtained under this exception is not considered a gift to the official nor is it reportable by the local agency:

1. CEREMONIAL ROLE: A third party source may provide a ticket if the official serves in a ceremonial role or is to perform functions at the event on behalf of the local agency.

3. WHAT HAPPENS IF YOUR AGENCY FAILS TO COMPLY WITH THIS RULE?

A local agency's failure to comply with FPPC Regulation 18944.1 will result in any ticket or pass received by the benefiting public official to be considered a gift to that official subject to the gift limit of $420 and is reportable if the fair market value of the single gift or the cumulative total value of multiple gifts from the original source is $50 or more.

4. HOW DOES THIS RULE APPLY TO SPONSORSHIP AGREEMENTS?

Tickets or passes provided by contracts (not involving the use of public property) may only be distributed to public officials under the following conditions: (1) the ticket or pass is not earmarked for use by a particular official by the original source of the ticket; (2) the local agency must retain sole discretion as to which official receives the ticket or pass; and (3) the tickets or passes must be distributed by the local agency according to a written distribution policy. This written policy is required to contain several provisions pursuant to these regulations and must be adopted by the local legislative body. Additional disclosure and posting rules are discussed below. (FPPC Regulation 18944.1 (b)(2)(A)(i)-(iii).)

Tickets or passes provided pursuant to a written contract involving the use of public property must follow this same written distribution policy. However, these tickets or passes may be earmarked so long as the tickets or passes are provided in accordance with the local agency's written distribution policy.

5. HOW SHOULD THE OFFICIAL TREAT THE FOLLOWING:

- Tickets and Parking Passes: Exclusive rights to stadium suites, venue tickets, various levels of parking passes must all be distributed in accordance with the local agency's written policy. Again, these tickets or passes may not be earmarked.

- Catering Credits: If the admission ticket price does not include the costs of catering, any amount or discount on food or beverages received by the official will constitute a gift to the official. This gift only needs to be reported by the official if the cost of his or her pro-rata share is $50 or more.

- Film Tickets or Passes: These tickets or passes must be distributed in accordance with the local agency's written policy. Again, these tickets or passes may not be earmarked.

- Concert Tickets or Passes: These tickets or passes must be distributed in accordance with the local agency's written policy. Again, these tickets or passes may not be earmarked.

6. WHAT ABOUT TICKETS OR PASSES TO THE COUNTY FAIR?

- Answer: These tickets or passes must be distributed in accordance with the local agency's written policy. Tickets or passes may be earmarked.

Tickets Provided by Agency Report

California Form 802

A Public Document

This form is for use by all state and local government agencies to disclose the distribution of tickets or passes that allow admission to facilities, events, shows, or performances for entertainment, amusement, recreational, or similar purposes. The agency must complete Form 802 identifying agency officials who receive tickets or passes from the agency as well as other individuals and organizations that receive tickets or passes at the behest of agency officials. Form 802 must be posted in a prominent fashion on the agency's website.

Gifts of Tickets or Passes to Public Officials
FPPC Regulation 18944.1 sets out the circumstances under which an agency's distribution of tickets or passes to or at the behest of an official in the agency does not result in a gift to the official. (Regulation 18944.1 is available on the FPPC website at www.fppc.ca.gov.) Even though the distribution of tickets or passes to a public official under the regulation is not a gift to the official, the agency must disclose the distribution on Form 802. The official does not have to disclose tickets or passes received or distributed under the regulation on his or her Statement of Economic Interests (Form 700), but tickets or passes received or distributed by the official that do not fall under the regulation may be subject to disclosure on the official's Form 700 and subject to gift limits.

Posting Form 802
The Form 802 must be posted on the agency's website within 30 days after the distribution. If the agency does not maintain a website, the form must be maintained by the agency as a public record, be available for public inspection and copying, and be forwarded to the FPPC for posting on its website.

Part 1. Agency Identification
List the agency's name, address and the name of an agency contact. Mark the amendment box if changing any information on a previously filed form and include the date of the original filing.

Part 2. Event For Which Tickets Were Distributed
Provide the date(s) of the event, a description of the event, and the face value (i.e. the cost to the public) of the ticket or pass. Check the box indicating whether the event was an "agency event" (such as a county fair, or an event for which the agency purchased tickets). If the agency received the tickets from an outside source, identify the source, the number of tickets received, and check the box to identify whether the tickets or passes were provided to the agency:

- Gratuitously; or
- Pursuant to a contract.

Part 3. Agency Official(s) Receiving Ticket(s)
Disclose the name of each agency official that received a ticket or pass and the number of tickets or passes the official received. Also state whether the distribution is income to the official or describe the public purpose for which the official received the tickets or passes.

Part 4. Individual or Organization Receiving Ticket(s)
If tickets or passes were distributed to an individual or organization outside the agency, at the behest of an official of the agency, provide the name of the official. Disclose the name(s) of the individuals(s) who received the tickets or passes and the number of tickets or passes provided. If the tickets or passes were provided to an organization, the agency may post the name, address, a description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the name of each individual that received a ticket or pass. Also, describe the public purpose for the distribution to the individual or organization.

Part 5. Verification
The agency head or his or her designee must sign the form.

Privacy Information Notice
Information requested on all FPPC forms is used by the FPPC to administer and enforce the Political Reform Act (Government Code Sections 81000-91014 and California Code of Regulations Sections 18109-18997). All information required by these forms is mandated by the Political Reform Act. Failure to provide all of the information required by the Act is a violation subject to administrative, criminal, or civil prosecution. All reports and statements provided are public records open for public inspection and reproduction.

If you have any questions regarding this Privacy Act Notice, please contact the FPPC.

General Counsel
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814
(916) 322-5660

Tickets Provided by Agency Report

A Public Document

TICKETS PROVIDED BY AGENCY REPORT

1. Agency Name

Date Stamp

California Form **802**

For Official Use Only

Division, Department, or Region *(if applicable)*

Street Address

Area Code/Phone Number | **E-mail**

Agency Contact *(name and title)*

☐ **Amendment** *(Must explain in Part 5.)*

Date of Original Filing: _____ *(month, day, year)*

2. Event For Which Tickets Were Distributed

Date(s) of Event: ____/____/____ Description of Event: _____

____/____/____ Face Value of Ticket: $ _____

Agency Event ☐ Yes ☐ No (Identify source of tickets below.)

Name of Outside Source of Ticket(s) Provided to Agency: _____

Number of Tickets Received: _____ Ticket(s) Provided to Agency: ☐ Gratuitously ☐ Pursuant to Contract

3. Agency Official(s) Receiving Ticket(s) (use a continuation sheet for additional names)

Name of Official (Last, First)	Number of Tickets	State Whether the Distribution is Income to the Official or Describe the Public Purpose for the Distribution

4. Individual or Organization Receiving Ticket(s) (Provided at the behest of an agency official.)

Name of Behesting Agency Official: _____

Name of Individual or Organization: _____ Number of Tickets: _____

Description of Organization: _____

Address of Organization: _____
Number and Street City State Zip Code

Purpose for Distribution: (Describe the public purpose for the distribution to the organization.)

_____

5. Verification

I have determined that the distribution of tickets set forth above is in accordance with the provisions of FPPC Regulation 18944.1.

Signature of Agency Head or Designee | Print Name | Title | *(month, day, year)*

Comment: *(Use this space or an attachment for any additional information including amendment explanation.)*

_____

(Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations)

§ 18944.1. Gifts: Tickets or Passes to Events.

For purposes of this regulation "ticket or pass" means admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose.

(a) Ticket or pass provided by source other than official's agency. A ticket or pass provided to an official for his or her admission to an event at which the official performs a ceremonial role or function on behalf of the agency is not a gift to the official.

(b) Ticket or pass provided to official by official's agency.

(1) When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to the provisions of this regulation, provided that the official treats the ticket or pass as income consistent with applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official in complying with the provisions of subdivision (d) below.

(2) When an agency provides a ticket or pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section 82028 that equal or greater value has been provided in exchange therefor, provided that all of the following requirements are met:

(A) With respect to a ticket or pass from an outside source provided to an official by the official's agency:

(i) The ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket or pass;

(ii) The agency determines, in its sole discretion, which official may use the ticket or pass.

(iii) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency in accordance with subdivision (c) below.

(B) With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.

(c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

(1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

(2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and

(3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family solely for their personal use.

(d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form

provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

(1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;

(2) a description of the event;

(3) the date of the event;

(4) the face value of the ticket or pass;

(5) the number of tickets or passes provided to each person;

(6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and

(7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.

(e) The Commission recognizes the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.

(f) The provisions of subdivision (b) apply only to the benefits the official receives by the admission and are not applicable to any other benefits the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82028, Government Code.

HISTORY

1. Renumbering of former section 18726.7 to section 18944.1 with amendment of section heading filed 6-22-94; operative 6-22-94 (Register 94, No. 25).

2. Change without regulatory effect relocating section filed 11-17-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 46).

3. Amendment of first paragraph and subsections (a)-(b) and (d)-(e) filed 7-25-95; operative 7-25-95 pursuant to Government Code section11343.4(d) (Register 95, No. 30).

4. Repealer and new section filed 1-8-2009; operative 2-7-2009. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil 010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2009, No. 2).